

**IN THE COURT OF  
APPEAL AT NAIROBI**

**(OKELLO, JA. (IN CHAMBERS))**

**CRIMINAL APPLICATION NO. E006 OF**

**2026 BETWEEN**

**JAMILA KABUIYA ABDI.....APPLICANT**

**AND**

**REPUBLIC.....RESPONDENT**

*(An application for extension of time to file an appeal out of time against the conviction and sentence in of the High Court of Kenya at Nairobi (L. Kimaru J.) delivered on 3<sup>rd</sup> October, 2015*

*in*

***HC.CR.A. No. 79 of 2014)***

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**R U L I N G**

1. By a Notice of Motion dated 17<sup>th</sup> February, 2026, the applicant, applied for leave to file appeal out of time against the judgment delivered on 3<sup>rd</sup> October, 2015 in High Court Criminal Appeal No. 79 of 2014 at Nairobi.
2. The matter came up for hearing by way of written submissions on 22<sup>nd</sup> April, 2026. However, there were no written submissions

filed by both parties. There was proper service effected on 15<sup>th</sup> April, 2026.

3. The applicant's case is premised on the grounds stated on the face of the application and the supporting affidavit of the applicant herein. The respondent did not file any response to the application.
4. In the application and the supporting affidavit therein, the applicant avers that she be granted leave to appeal out of time and that the memorandum of appeal annexed hereto be deemed as duly filed and served. In her supporting affidavit, the applicant contends that during her trial, she was not accorded legal aid despite facing a capital offence contrary to her constitutional rights. Then she had already filed a notice of appeal but due to circumstances beyond her control including imprisonment, lack of knowledge of the law, and absence of counsel, the appeal was not filed within the prescribed time.
5. She further deposed that the delay was occasioned by her disadvantaged position as a foreign national, indigent and unregistered prisoner. She further contends that that she

has

arguable appeal and has listed some of the grounds of appeal on the face of her supporting affidavit.

6. She concludes by praying to the Court that she be granted leave to file the appeal out of time since the issues raised go to the root of a fair trial and raises substantial issues of law.
7. The application is not opposed by the respondent as there is no response on record.
8. Rule 4 of the Court of Appeal Rules provides:

*“The Court may, on such terms as it thinks just, by order, extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.”*

9. Under Rule 4 of the Court of Appeal Rules, 2022, an extension of time is a discretionary power grantable on well settled principles. In **Leo Sila Mutiso vs Rose Hellen Wangari Mwangi [1991] eKLR**, the Court set out the principles to include the length of the delay, the reason for the delay, the

chances of the appeal succeeding, the degree of prejudice to the respondent, and the conduct of the parties. The principles that guide this Court in

determining whether to extend time pursuant to Rule 4 of the Rules of this Court were rehashed in **Mwangi vs Kenya Airways (2003) KLR 486 at page 489** the Court stated thus:

*“Over the years, the Court has set out guidelines on what a single judge should consider when dealing with an application for extension of time under Rule 4. For instance, in **Leo Sila Mutiso vs Rose Hellen***

***Wangari Mwangi, (Civil Application No. Nai. 255 of 1997,** the Court expressed itself thus: It is now well settled that the decision whether to extend the time is essentially discretionary. It is also well settled that in general, the matters which this Court takes into account in deciding whether to grant an extension of time are; first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”*

10. The principles enunciated are the principles I proceed to apply in the instant case in determining whether the prayers sought by the applicant in the notice of motion should be granted. The applicant's prayers are that the Honourable Court extend time and grant leave to allow the applicant to file appeal out of time against the judgment dated 3<sup>rd</sup> October, 2015 in Nairobi HCCRA No. 79 of 2015.

11. Having perused and considered the application, the supporting affidavit, and the record of appeal attached herein, the law, this Court is now called upon to determine whether the application meets the threshold for enlargement of time.

12. The first issue of consideration is the length of delay. From the records, the judgment in issue was delivered on **3<sup>rd</sup> October, 2015**, where upon the applicant had 14 days within which to file the notice of appeal i.e., **17<sup>th</sup> October 2015**. In

**Muya vs**

**Tribunal Appointed to Investigate the Conduct of Justice**

**Martin Mati Muya, Judge of the High Court of Kenya**

**(Petition 4 of 2020) [2022] KESC 37 (KLR)** was held that

*“where there is delay, the Court must interrogate whether the same is justifiable and thus excusable, or not. In order to do that, the Court must interrogate the circumstances of the case.”*

13. Thus, the length of delay is considered on a case-by-case basis.

Noting that the notice of appeal ought to have been filed on or before **17<sup>th</sup> October, 2015** and that the application for

leave to file an appeal out of time has been filed eleven years after the said date, the delay appears inordinate. However, I'm guided by

the Supreme Court ruling in **Muya vs Tribunal Appointed to**

**Investigate the Conduct of Justice Martin Mati Muya,  
Judge**

**of the High Court of Kenya (Petition 4 of 2020) [2022]**

**KESC 16 (KLR)** where it was observed that in determining inordinate delay, “focus should not be on the length of the delay per se, but also on the justification and reasons, which in turn must be rational and plausible” on the same note, in

**Karani vs Judicial**

**Service Commission (Petition No. 3 of 2021) [2022]  
**KESC 37****

**(KLR)**, the Supreme Court held that “...where there is delay, the Court must interrogate whether the same is justifiable and thus excusable, or not. In order to do that, the Court must interrogate the circumstances of the case.”

14. The reasons given by the applicant for the delay in filing the record of appeal having already filed the Notice of Appeal within time is that the same was caused by circumstances beyond her control including imprisonment, lack of knowledge of the law, absence of counsel, and being a foreigner. I’m persuaded that the circumstances surrounding the delay and the reasons given are plausible. The explanation given from

the face of the application and the supporting affidavit is satisfactory and justifiable.

15. Thus, having considered the application, the supporting affidavit and the law, Rule 61(1) of the Court of Appeal Rules, 2022 provides that a person who desires to appeal to the Court shall give notice in writing, which shall be lodged in six copies with the registrar of the superior Court at the place where the decision against which it is desired to appeal was given, within fourteen days after the date of that decision, and the notice of appeal shall institute the appeal. The judgment the subject of appeal was delivered on **3<sup>rd</sup> October, 2015**, in the instant application the applicant filed a Notice of Appeal within the stipulated time but was unable to file the record of appeal. Rule 6(1) though provides that “**..the Notice of Appeal shall institute an appeal..**” I therefore find that the delay though appears long, is deserving of this Court’s discretion to extend the time to file the appeal.

16. On the reason for delay, the applicant deposed that the delay was occasioned by her disadvantaged position as a foreign national, indigent and unregistered prisoner. She further contends that that she has arguable appeal and has listed some of the grounds of appeal on the face of her supporting

affidavit. These in my view

are plausible reasons that may occasion the delay. This limb therefore has also been met.

17. On whether there are chances of success, I have to consider whether there is a single arguable ground that has been raised by the applicant. A quick perusal of the record of appeal and the grounds stated in the application and the draft memorandum of appeal attached herein, I am persuaded that the appeal is arguable.
18. Finally, on the degree of prejudice, the applicant is praying for leave to appeal against conviction and sentence on the offence of robbery with violence contrary to Section 295 as read together with section 296(2) of the Penal Code, Cap 63. I don't see any prejudice that the public will suffer if this application is allowed.
19. In the circumstances, the applicant has persuaded this Court that her application is deserving. This Court therefore, finds merit in application dated 17<sup>th</sup> February, 2026.

**20. CONSEQUENTLY, and for the reasons stated, and considering that the applicant is serving a life**

**imprisonment sentence, I am inclined to exercise my  
discretion in her**

**favour. The memorandum of appeal dated 17<sup>th</sup> February, 2026 are deemed as duly filed. The record of appeal shall be filed within 60 days from today.**

**Dated and delivered at Nairobi this 30<sup>th</sup> day of April, 2026.**

**DR. J. O. OKELLO**

.....  
**JUDGE OF APPEAL**

*I certify that this is  
a true copy of the  
original.*

***Signed***

**DEPUTY REGISTRAR.**

